

Model Language for State Statutes Limiting Eminent Domain Abuse

(SOURCE - http://www.castlecoalition.org/legislation/model/state_statute.html)

One simple way to remove the threat of eminent domain for economic development is simply to delete the statutory authorization for such uses of eminent domain. For example, Florida and New Mexico simply removed the authorization for eminent domain from its act giving powers to redevelopment authorities. Authorizations for eminent domain for private business generally appear in statutes dealing with economic or industrial development, redevelopment, and municipal powers.

Alternatively, a few possible approaches to a statute that would prevent the use of eminent domain for private development appear below.

Three other types of provisions that also discourage the abuse of eminent domain are (1) allowing a former owner to regain ownership of condemned property if the government fails to use it within a given period of time; (2) time limits on blight or redevelopment designations; (3) attorneys fees for condemnees challenging the validity of takings.

Requiring that Eminent Domain Be for Public Use and Defining Public Use

Notwithstanding any other provision of law, neither this State nor any political subdivision thereof nor any other condemning entity shall use eminent domain unless it is necessary for a public use. Whenever property is condemned and will be used by a private party, the condemnor must establish by clear and convincing evidence that the use of eminent domain complies with this section and is reasonably necessary.

Public use: The term "public use" shall only mean (1) the possession, occupation, and enjoyment of the land by the general public, or by public agencies; (2) the use of land for the creation or functioning of public utilities or common carriers*; or (3) where the use of eminent domain (a)(i) removes a public nuisance; (ii) removes a structure that is beyond repair or unfit for human habitation or use; or (iii) is used to acquire abandoned property and (b) eliminates a direct threat to public health and safety caused by the property in its current condition**. The public benefits of economic development, including an increase in tax base, tax revenues, employment, general economic health, shall not constitute a public use.

Prohibiting Eminent Domain for Private Use and Defining an Exception for Certain Properties that Threaten Public Health and Safety (Blight Exception)

Notwithstanding any other provision of law, neither this State nor any political subdivision thereof or any other condemning entity shall use eminent domain to take private property without the consent of the owner to be used for private commercial enterprise, economic development, or any other private use except that property may be transferred or leased:

1. to private entities that are public utilities or common carriers*;
2. to private entities that occupy an incidental area within a publicly owned and occupied project;

3. to private entities if the current condition of the property poses an existing threat to public health and safety and meets the definition of "condemnation-eligible" property. The condemnor shall bear the burden of establishing by clear and convincing evidence that property is condemnation-eligible. Condemnation-eligible property shall include:
 - a. Any premises which because of physical condition, use or occupancy constitutes a public nuisance or attractive nuisance.
 - b. Any structure which, because it is dilapidated, unsanitary, unsafe, or vermin-infested, has been designated by the agency responsible for enforcement of the housing, building or fire codes as unfit for human habitation or use.
 - c. Any structure which, in its current condition, is a fire hazard, or is otherwise dangerous to the safety of persons or property.
 - d. Any structure from which the utilities, plumbing, heating, sewerage or other facilities have been disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use.
 - e. Any vacant or unimproved lot or parcel of ground in a predominantly built-up-neighborhood, which by reason of neglect or lack of maintenance has become a place for accumulation of trash and debris, or a haven for rodents or other vermin.
 - f. Any property that has tax delinquencies exceeding the value of the property.
 - g. Any property with code violations affecting health and safety that has not been substantially rehabilitated within one year of the receipt of notice to rehabilitate from the appropriate code enforcement agency.
 - h. Any property which, by reason of environmentally hazardous conditions, solid waste pollution or contamination, poses a direct threat to public health and safety in its present condition.
 - i. Any abandoned property, defined as property not occupied by a person with a legal or equitable right to occupy it and for which the condemning authority is unable to identify and contact the owner despite making reasonable efforts or which has been declared abandoned by the owner, including an estate in possession of the property.

*In some states, it may be necessary to specifically include "electric cooperatives," or some other type of entity, depending on the nature of utilities and common carriers in your state.

Prohibiting Eminent Domain for Private Business

Notwithstanding any other provision of law, neither this State nor any political subdivision thereof or any other condemning entity shall use eminent domain to take private property without the consent of the owner to be used for private commercial enterprise, economic development, or any other private use, except that property may be (1) transferred or leased to private entities that are common carriers or public utilities*; (2) where the use of eminent domain (a)(i) removes a public nuisance; (ii) removes a structure that is beyond repair or unfit for human habitation or use; or (iii) is used to acquire abandoned property and (b) eliminates a direct threat to public health and safety caused by the property in its current condition**; (3) to private entities that occupy an incidental area within a publicly owned and occupied project. Whenever property is

condemned and will be used by a private party, the condemnor must establish by clear and convincing evidence that the use of eminent domain complies with this section and is reasonably necessary.

Prohibiting Eminent Domain for Economic Development and Defining Economic Development

Notwithstanding any other provision of law, neither this State nor any political subdivisions thereof nor any other condemnor shall use eminent domain to take private property without the consent of the owner to be used for economic development. Whenever property is condemned and will be used by a private party, the condemnor must establish by clear and convincing evidence that the use of eminent domain complies with this section and is reasonably necessary.

Economic Development--The term "economic development" means any activity to increase tax revenue, tax base, employment, or general economic health, when that activity does not result in (1) the transfer of land to public possession, occupation, and enjoyment; (2) the transfer of land to a private entity that is a public utility or common carrier*; (3) the use of eminent domain (a)(i) to remove a public nuisance; (ii) to remove a structure that is beyond repair or unfit for human habitation or use; or (iii) to acquire abandoned property and (b) to eliminate a direct threat to public health and safety caused by the property in its current condition**; or (4) to private entities that occupy an incidental area within a publicly owned and occupied project.

*In some states, it may be necessary to specifically include some other type of utility, like "electric cooperatives," depending on the nature of utilities and common carriers in your state.

**For a more detailed definition of conditions that constitute a direct threat to public health and safety in their current condition, see Prohibiting Eminent Domain for Private Use and Defining an Exception for Certain Properties that Threaten Public Health and Safety (Blight Exception).